

VZCZCXRO4955
RR RUEHGH
DE RUEHIN #0074/01 0110135
ZNR UUUUU ZZH
R 110135Z JAN 07
FM AIT TAIPEI
TO RUEHC/SECSTATE WASHDC 3687
RUEATRS/DEPT OF TREASURY WASHDC
INFO RUCPDOG/USDOC WASHDC
RUCPCIM/CIM NTDB WASHINGTON DC
RUEHBK/AMEMBASSY BANGKOK 3531
RUEHBJ/AMEMBASSY BEIJING 6189
RUEHUL/AMEMBASSY SEOUL 8383
RUEHGP/AMEMBASSY SINGAPOR 6754
RUEHKO/AMEMBASSY TOKYO 8366
RUEHML/AMEMBASSY MANILA 9899
RUEHJA/AMEMBASSY JAKARTA 3986
RUEHKL/AMEMBASSY KUALA LUMPUR 3636
RUEHHI/AMEMBASSY HANOI 3200
RUEHBY/AMEMBASSY CANBERRA 4420
RUEHWL/AMEMBASSY WELLINGTON 1683
RUEHHK/AMCONSUL HONG KONG 7421
RUEHGH/AMCONSUL SHANGHAI 0697
RUEHGZ/AMCONSUL GUANGZHOU 9878

UNCLAS SECTION 01 OF 08 TAIPEI 000074

SIPDIS

SIPDIS

STATE PLEASE PASS USTR
STATE FOR EB/IFD/OIA, EAP/RSP/TC, EAP/EP
USTR FOR ALTBACH and Stratford
USDOC FOR 3132/USFCS/OIO/EAP/WZARIT
TREASURY FOR OASIA/LMOGHTADER
TREASURY ALSO PASS TO FEDERAL RESERVE/BOARD OF
GOVERNORS, AND SAN FRANCISCO FRB/TERESA CURRAN

E.O. 12958: N/A

TAGS: [EINV](#) [EFIN](#) [ECON](#) [PINR](#) [OPIC](#) [KTDB](#) [USTR](#) [TW](#)

SUBJECT: Taiwan's 2007 Investment Climate Statement (Part I)

REF: 06 STATE 178303

This is the first part of Taiwan's 2007 Investment Climate Statement. The second part will follow septel.

A.1 Openness to Foreign Investment

¶1. Taiwan officially welcomes foreign direct investment. Taiwan's science-based industrial parks and export processing zones offer streamlined procedures. Taiwan has made significant improvement in protecting intellectual property.

¶2. As part of its efforts to improve the investment climate, Taiwan no longer has a list of permitted investments, but maintains a "negative" list of industries closed to foreign investment to maintain security and environmental protection. Liberalization has reduced that list to less than one percent of manufacturing categories and less than five percent of service industries. The latest significant liberalization took place in February of 2003 when alcohol production, agricultural production, fishing, and animal husbandry were opened to foreign investors, although prior approval is still required from the Taiwan authorities. To live up to its WTO accession commitments, Taiwan opened private production of cigarettes in 2004 without any foreign ownership limit. Railway transport, freight transport by small trucks, pesticide manufacture, real estate development, brokerage, leasing and trading are all completely open to foreign investment. After its accession to the WTO in January 2002, Taiwan started permitting imports of gasoline and liquid natural gas (LNG) by the private sector, without any foreign ownership restriction. It also permitted private wine and cigarette imports. In April 2004, Taiwan dropped mining and ordinary trucking services from the negative list but added single-axle truck leasing.

13. Most foreign ownership limits have been removed. Taiwan-flagged merchant ships are subject to a foreign ownership limit of two-thirds. The foreign ownership limit on wireless and wireline telecommunications firms is 60%, including a direct foreign investment limit of 49%. For the state-owned Chunghwa Telecom Co., which controls 97% of the fixed line telecom market, the limit on direct and indirect foreign investment was raised from 20% to 35% in August 2004 and to 49% in August 2006. In January 2003, Taiwan raised the foreign ownership limit on cable television broadcasting services from 50% to 60%, including a 20% limit on foreign direct investment. As a result, foreign investors now control three of the top five cable TV networks in Taiwan. A 50% foreign ownership limit remains on satellite television broadcasting services, power transmission and distribution, piped distribution of natural gas, high-speed railways, ground-handling firms, air-cargo terminals, air-catering companies, and air-cargo forwarders. The 50% foreign ownership limit on ground-handling firms, air-cargo terminals, air-catering companies, and air-cargo forwarders was removed for investors from WTO members in November 2001. The foreign ownership limit on airline companies is 33%, which Taiwan plans to raise to 49% in the near future.

14. Regulations governing foreign direct investment principally derive from the Statute for Investment by Foreign Nationals (SIFN) and the Statute for Investment by Overseas Chinese (SIOC). These two laws permit foreign investors to use either foreign currencies or NT dollars. In mid-2006, Taiwan authorities started permitting NT dollar loans obtained from local banks to serve as sources of foreign direct investment. Companies with foreign ownership below 33% are exempt from limitations on the negative list. Both the SIFN and the SIOC specify that foreign-invested enterprises must receive

TAIPEI 00000074 002 OF 008

the same regulatory treatment accorded local firms. Foreign companies may invest in state-owned firms undergoing privatization and are eligible to participate in publicly financed research and development programs.

15. The Investment Commission (IC) of the Ministry of Economic Affairs screens applications for investment, acquisitions, and mergers. According to the IC, approximately 98% of projects with an investment value less than NT\$500 million (US\$15.4 million at an exchange rate of NT\$32.5 per US\$) are excluded from the negative list; the IC estimates that approval for these projects is generally granted within two working days at the IC division chief level. For investments in the range from NT\$500 million to NT\$1,500 million excluded from the negative list, approval authority rests with the IC Executive Secretary and normally is granted within three working days. Approval of investments in industries above NT\$1,500 million or on the negative list requires two weeks because those investments must be referred to the relevant supervisory ministries and require approval of the IC Chairman or IC Executive Secretary. Investments involving complications such as merger and acquisition require screening at the monthly meeting of an inter-ministerial commission.

16. Taiwan offers incentives to encourage investment, including accelerated depreciation and tax credits for investments in emerging or strategic industries, pollution-control systems, production automation, and energy conservation. Equipment for R&D purposes can be brought into Taiwan duty-free. Other incentives include low-interest loans for developing new and/or cutting edge products, upgrading traditional industries, and importing automation or pollution-control equipment. A broad five-year tax holiday for new investments was re-instituted in January 1995. Incentives for manufacturing firms to locate factories in designated industrial parks prior to the end of December 2006 include free rent the first two years, 40% discount on rent the next two years, and 20% discount on rent in the fifth and sixth years. A three-year development program adopted in late 2006 has extended this incentive to December 2008. Under another incentive program, state-owned land is available for investors rent-free for the first four years and 50% off for the next six years. As part of its financial reform, Taiwan encourages and provides incentives for banks, insurance companies, securities firms, and financial holding companies to merge.

¶7. However, in 2005 and 2006, Taiwan authorities slashed some investment tax incentives as a part of a tax reform designed to reduce the fiscal deficit. A new law to levy a ten-percent alternative minimum tax on business firms became effective in January 2006. Since early 2005, Taiwan authorities have cut the number of industries entitled to tax incentives by one-third and doubled the thresholds in annual R&D expenses for tax offsets from NT\$15-20 million to NT\$30-40 million. The tax credit for procurement of automation equipment has been lowered from 11% to 7% and that for procurement of technologies reduced from 10% to 5%. The tax credit for projects in remote poor areas has been cut from 20% to 15%.

A.2 Conversion and Transfer Policies

¶8. There are relatively few restrictions on converting or transferring direct investment funds. Foreign investors with approved investments can readily obtain foreign exchange from a large number of designated banks. The remittance of capital invested in Taiwan is made according to a schedule submitted by the company to the IC. Declared earnings, capital gains, dividends, royalties, management fees, and other returns on investments can be

TAIPEI 00000074 003 OF 008

repatriated at any time. Capital movements arising from trade in merchandise and services, as well as firm debt servicing, are not restricted. No prior approval is required for movement of foreign currency funds not requiring exchange between the NT dollar and the foreign currency. No prior approval is required if the cumulative amount of inward or outward remittances does not exceed the annual limit of US\$5 million for a person or US\$50 million for a corporation. There are no reported delays in remitting investment returns or principal through legal channels.

¶9. An outbound investment may not exceed 40% of the investing company's net worth or paid-in capital (whichever is less), unless the company charter waived the 40% limit or unless such investment is approved by shareholders. A local company is not required to obtain prior approval for overseas investments; however, such an approval exempts the company from the annual capital outflow limit of US\$50 million. Investments in China are subject to additional restrictions.

¶10. Taiwan has significantly relaxed restrictions on Taiwan entities' direct investment in China down to a negative list covering only about 100 manufacturing products and 430 agricultural products. Taiwan has abolished a requirement for direct investment in China to go through third nations or areas and removed a direct investment limit of US\$50 million. The ceiling on small and medium enterprises' investment in China was raised from NT\$60 million to NT\$80 million. For large enterprises, the China investment may not exceed 20% of the company's net worth exceeding NT\$10 billion, 30% of net worth from NT\$5 billion to NT\$10 billion, and 40% of the net worth below NT\$5 billion. For investments below US\$200,000, prior approval can be issued within the same day of submitting the application. Taiwan authorities require an investor to submit a quarterly financial report if the cumulative investment in a project exceeds US\$20 million. Investors are encouraged to repatriate their capital and earnings.

¶11. Taiwan authorities have actively encouraged investment in Southeast Asia and India. Investments are also encouraged in a number of countries with which Taiwan has diplomatic relations, mainly in Central America. Incentives include loans and/or overseas investment insurance from Taiwan's Export-Import Bank.

A.3 Expropriation and Compensation

¶12. No foreign-invested firm has ever been nationalized or expropriated in Taiwan. No examples of "creeping expropriation" or official actions tantamount to expropriation have been reported.

Under Taiwan law no venture with 45% or more foreign investment can be nationalized for a period of 20 years after the venture is established. Expropriation can be justified only for national defense needs and "reasonable" compensation must be given.

----- A.4 Dispute Settlement -----

¶13. Taiwan is not a member of the International Center for the Settlement of Investment Disputes or the New York Convention of 1958 on the recognition and enforcement of foreign arbitration awards. Investment disputes with the government are not common. Normally, Taiwan resolves disputes according to domestic laws and regulations.

¶14. Taiwan has comprehensive commercial laws, including the Company Law, Commercial Registration Law, Business Registration Law,

TAIPEI 00000074 004 OF 008

Commercial Accounting Law as well as laws for specific industries. Taiwan's Bankruptcy Law guarantees that all creditors have the right to share the assets of a bankrupt debtor on a proportional basis. Secured interests in property, both chattel and real, are recognized and enforced through a registration system.

¶15. Taiwan's court system is generally viewed as independent and free from overt interference by the other government branches. Judges are generally over-worked. In response to complaints about the slow pace of the judicial decision-making, Taiwan authorities adopted measures in 2002 to monitor the case processing time. Simplified courts have been set up to deal with minor cases that can be resolved quickly. The legislature is considering a bill to set up special courts for intellectual property rights (IPR) cases. The judgments of foreign courts with jurisdictional authority are enforced in Taiwan by local courts on a reciprocal basis.

----- A.5 Performance Requirements and Incentives -----

¶16. All of Taiwan's performance requirements were removed in January 2002 upon Taiwan's WTO accession. Like domestic firms, foreign-invested companies must be located in areas zoned for appropriate industrial or commercial use. Taiwan does not require that firms transfer technology, locate in specified areas, or hire a minimum number of local employees as a prerequisite to investment.

¶17. Manufacturing firms located in export-processing zones and science-based industrial parks are required to export all of their production in exchange for tariff-free treatment of production inputs. However, these firms may sell on the domestic market upon payment of relevant import duties.

¶18. When acceding to the WTO in January 2002, Taiwan promised to phase out industrial offset requirements (IOR) for non-military public procurement upon signing the Government Procurement Agreement (GPA). Even without the GPA membership, Taiwan started reducing the IOR coverage of non-military procurements four years ago. Currently, only railway and power generation projects are subject to IOR. For these two categories and military procurements, a contract of US\$5 million or more triggers an offset obligation of at least 33%. In some military cases, the offset ratio has reached 70% due to legislative pressure. Over the past 18 years since the first industrial offset contract (IOC) was signed in 1988, Taiwan has signed IOCs with 46 suppliers from ten foreign countries. Commitment value of these contracts total US\$6,998 million, and realized contracts amounted to US\$4,882 million. Half of the total realized value was directed to transfer of technologies, 19% to foreign direct investment in Taiwan, 17% to procurement from Taiwan, 6% to trade promotion, 4% to personnel training, and 3% to assessment certification. Taiwan has published industrial offset rules in both Chinese and English languages to which readers can get internet access. However, some contractors still complain of lack of transparency and predictability in setting offset requirements.

A.6 Right to Private Ownership and Establishment

¶19. Private investors have the general right to establish and own business enterprises, except in a limited number of industries involving national security and environmental protection. Private entities have the right to freely acquire and dispose of interests in business enterprises. Private firms have the same access as state-owned companies to markets, credit, licenses, and supplies. Taiwan authorities have eliminated state-owned monopolies in such

TAIPEI 00000074 005 OF 008

areas as power generation, oil refining, telecommunications, and cigarette and wine production.

A.7 Protection of Property Rights

¶20. Over the past year, Taiwan has continued efforts to improve its IPR legal regime and enforcement. The Intellectual Property Office (TIPO) has set up a joint task force to conduct internet monitoring and has coordinated with enforcement agencies to implement this program. Taiwan has amended its Patent Law and Copyright Law to extend the term of protection from 18 years to 20 years for some patents and to define computer software as literary works. Taiwan has enacted the Optical Media Law to address CD/DVD piracy problems.

The law provides Taiwan authorities with a legal framework to manage CD manufacturing plants through licensing and the use of Source Identification (SID) codes in production. Convicted violators may receive prison terms of up to three years and fines of up to NT\$6 million (US\$184,600). The Optical Media Law and the Joint Optical Disk Enforcement (JODE) Task Force's night/day inspections have led to a dramatic decrease in large-scale production of counterfeit CD products. Taiwan passed additional amendments to strengthen its copyright law in 2003 and 2004. These amendments made infringement a public crime, increased penalties for counterfeiters and made it illegal to tamper with technical protection measures. A 2004 amendment to the Pharmaceutical Law stiffened penalties for production, distribution and sale of counterfeit medicines. A 2005 amendment to the Law to authorized pharmaceutical data exclusivity for five years to prevent unfair commercial data use.

¶21. Taiwan established in 2003 an Integrated Enforcement Task Force (IETF) consisting of 220 IP police officers. The task force was transformed in 2004 to a permanent IP police squadron. The IP police have frequently raided retail optical media sales points to enforce IP rights, leading to a significant decrease in the number of vendors of counterfeit CDs and DVDs. Other enforcement measures include increasing the reward (by ten times to NT\$10 million (US\$300,000) to IPR informants for counterfeiting seizures and setting up an anti-pirating CD export task force to strengthen inspection of commodities entering or leaving Taiwan.

¶22. Taiwan's Legislature (LY) passed amendments to the Patent and Trademark Laws in January and April of 2003 which abrogated the administrative and legal procedures for opposing patent applications and added voice and 3-D shapes as eligible for trademark protection.

¶23. While Taiwan has improved IPR protection, transshipment of counterfeit products from China to the United States remains a problem. Taiwan's ranking in counterfeit goods seized by the U.S. Customs dropped from second highest in 2002 to well below the top ten during 2003-2004. However, an increase in transshipment of counterfeit goods from China pushed up Taiwan's ranking back to ninth in 2005. In addition, Taiwan is facing a growing internet-based piracy threat. Counterfeit and parallel imported pharmaceuticals are common in the Taiwan marketplace. Although the LY passed amendments to the Pharmaceutical Law in March 2004 to increase the penalties for dealing in counterfeit pharmaceuticals, enforcement remains relatively weak. Rights owners continue to complain of slow progress in judicial cases, or poor protection on trade dress properties, such as unregistered marks, packing

configurations, and outward appearance features.

A.8 Transparency of the Regulatory System

TAIPEI 00000074 006 OF 008

¶24. Taiwan has a set of relatively comprehensive laws and regulations regarding taxes, labor, health and safety.

¶25. Foreign investors note that in addition to tax incentives, Taiwan's science-based industrial parks and export processing zones have simple and transparent bureaucratic procedures for the investment application process. Outside of these areas, the Department of Investment Services (DOIS) is supposed to function as the coordinator between investors and all agencies involved in the investment process. The Investment Commission (IC) is charged with reviewing and approving inbound and outbound investments.

¶26. Taiwan has simplified work-permit procedures for foreign white-collar employees. In March 2004, the Council of Labor Affairs (CLA) set up a single window to issue work permits for all white-collar workers. It takes 7 to 10 days for CLA to issue work permits. The work permit may be extended indefinitely as long as the employer considers the employment necessary.

¶27. Taiwan has removed the job experience requirement for employment of foreign management professionals by global operational headquarters and R&D centers as well as business firms of designated industries. White-collar workers having a master's degree or above are not subject to any job experience requirement. Those with lower education levels are required to have job experience. Foreign white- and blue-collar workers have the right to obtain permanent residence status after they have legally stayed in Taiwan for seven consecutive years with the minimum time of residence of 180 days per year in Taiwan. The seven-year requirement is waived for high-tech personnel and those who have made "significant contributions" to Taiwan.

¶28. The entry-visa issuance procedures for foreign white-collar workers who work for foreign-invested companies are relatively simple. A foreign executive who enters Taiwan with a tourist visa is no longer required to leave the island before the tourist visa can be changed to an employment visa. A foreign executive whose employment visa expires is not required to exit before renewing the visa.

A.9 Efficient Capital Markets and Portfolio Investment

¶29. A wide variety of credit instruments, all allocated on market terms, are available to both domestic- and foreign-invested firms. Legal accounting systems are largely transparent and consistent with international standards. The regulatory system is generally fair. Foreign portfolio investors are no longer subject to the foreign ownership limits or investment fund limits. In recent years, Taiwan authorities have taken a number of steps to encourage a more efficient flow of financial resources and credit. The limit on NT dollar deposits that a branch of a foreign bank may take has been lifted. Non-residents are permitted to open NT dollar bank accounts, which are subject to capital-flow controls. Taiwan has lifted restriction on residents opening bank accounts overseas. Limits on branch banking have been lifted. (Currently, there is a freeze on new bank branches to encourage consolidation.) Restrictions on capital flows relating to portfolio investment have been removed. The insurance and securities industries have been liberalized and opened to foreign investment. Access to Taiwan's securities markets by foreign institutional investors has also been broadened.

¶30. Taiwan abolished a complicated regulatory system governing

TAIPEI 00000074 007 OF 008

foreign portfolio investment in October 2003. In the past, only such approved "qualified foreign institutional investors" (QFIIs) as large banks, insurance companies, securities firms and mutual funds were permitted to engage in portfolio investment. Since then, any foreign institutional investor is allowed to enter Taiwan's markets.

Subsequent registration has replaced the need for prior approval. There is no minimum asset requirement. Investment and capital flows are not limited. On-shore foreign investors (like other residents) are still subject to capital flow limits of US\$5 million for an individual foreign investor and US\$50 million for an unregistered foreign company.

¶31. Taiwan has removed all legal limits on foreign ownership (except PRC) in companies listed on the Taiwan Stock Exchange (TAIEX) except for power distribution, telecommunications, mass media firms, and airline companies. There have been no reports of private or official efforts to restrict the participation of foreign-invested firms in industry standards-setting consortia or organizations.

¶32. Taiwan has a tightly regulated banking system. Since the mid-1980s, the financial sector as a whole has been steadily opening to private investment. The market share held by foreign banks remains relatively small (three percent), but will increase to ten percent after a number of foreign investors acquired local banks in ¶2006. The establishment of new securities firms, banks, insurance companies, and holding companies has underscored this liberalization trend and enhanced competition. Over the past decade, nine state-owned banks have been privatized. The only reinsurance company was privatized in 2002. Privatization efforts have reduced the number of public banks to four and cut the share of assets controlled by public banks from 61% to 16% of total assets of all domestic and foreign banks. The total assets of these four public banks were NT\$4.8 trillion (US\$148 billion) as of June 2006.

A.10 Political Violence

¶33. Taiwan is a relatively young multi-party democracy with still evolving, democratic political institutions. The close margin in the 2004 presidential election resulted in an attack on election offices and several large-scale demonstrations. Nevertheless, these incidents and other protests were peacefully resolved in a short time. There have been no reports of politically motivated damage to foreign investment. Both local and foreign companies have, however, been subject to protests and demonstrations relating to labor disputes and environmental issues.

A.11.a. Corruption

¶34. Taiwan has implemented laws, regulations, and penalties to combat corruption. The Corruption Punishment Statute and the criminal code contain specific penalties for corrupt activities. In January 2004, legislation doubled the penalties for corruption by financial personnel, including maximum jail sentences of up to ten years.

¶35. We are not aware of cases where bribes have been solicited for investment approval. Both central and local governments offer investors incentives including free rent on land for the first several years and discounts in subsequent years. Taiwan authorities encourage foreign investment and would take action against officials and individuals convicted of profiting illegally from foreign investors.

TAIPEI 00000074 008 OF 008

¶36. The Government Procurement Law promulgated in 1998 and amended in February 2001 was an element of promised significant improvements upon accession to WTO. The Public Construction Commission (PCC) now publishes all major government procurement projects that require open bidding, in accordance with WTO transparency requirements. The

PCC organizes inspection teams to monitor all public procurement projects both at the central and local levels. It now publishes results of bidding and of inspections. A task force has been organized to investigate complaints.

¶37. Authorities generally investigate allegations of corruption and take action to penalize corrupt officials. Since its inauguration in May 2000, the Chen Administration has strengthened anti-corruption efforts. Since then, prosecutors have indicted 8,720 persons for corruption, including prominent personalities, 467 senior officials (department director level and above) and 542 elected officials. Indicted elected officials included 21 legislators. In September 2006, the Taiwan High Court upheld a district court's four-years-in-jail sentence for a former speaker of the legislature on a charge of taking a NT\$150 million (US\$4.6 million) bribe. Over the past year, two deputy secretary generals of the Presidential Office stepped down due to corruption charges. The chairman of the Financial Supervisory Commission (FSC) was discharged of his duties and indicted for corruption when he was a chief executive officer of a state-owned enterprise. Anti-corruption efforts have contributed to an increase in Taiwan's corruption perception index compiled by the Transparency International from 5.3 in 1998 and 5.5 in 2000 to 5.6 in 2004 and 5.9 in 2005.

¶38. Attempting to bribe, or accepting a bribe from, Taiwan officials constitutes a criminal offense, punishable under the Corruption Punishment Statute and the Criminal Code. The Corruption Punishment Statute as amended in late 2002 treats payment of a bribe to a foreign official as a criminal act and makes such a bribe subject to criminal prosecution. The maximum penalty for corruption is life imprisonment plus a maximum fine of NT\$3 million dollars (US\$92,300). In addition, the offender may be barred from holding public office. The assets obtained from acts of corruption may be seized and turned over to either the injured parties or the Treasury.

YOUNG